

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

FILED

March 19, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

M. E. CUNNINGHAM (CLARK))	BLOUNT COUNTY
)	03A01-9603-CV-00088
Plaintiff-Appellee)	
)	
v.)	HON. W. DALE YOUNG,
)	JUDGE
)	
J. C. CUNNINGHAM)	
)	
Defendant-Appellant)	AFFIRMED AND REMANDED

APPELLANT J. C. CUNNINGHAM Pro Se

MARTHA MEARES OF MARYVILLE and JOHN E. McDONALD OF OAK RIDGE FOR APPELLEE

MEMORANDUM OPINION

Goddard, P.J.

James C. Cunningham, appearing pro se, appeals a divorce decree raising 11 separate issues. See appendix. Our review of the record persuades us that, except as to issue five, the only issue that arguably could be considered as addressing the order appealed, this is an appropriate case for affirmance under Rule 10(a) of this Court. We reached this conclusion because Mr. Cunningham's appeal as to the other issue was not timely perfected.

As to issue five, we conclude that Mr. Cunningham has failed to demonstrate by clear and convincing evidence that the Trial Court abused its discretion in denying his Rule 60.02¹ motion. Davidson v. Davidson, 916 S.W.2d 918 (Tenn.App.1995). See also Underwood v. Zurich Ins. Co., 854 S.W.2d 94 (Tenn. 1993), holding that Rule 60.02 "is to be invoked only in cases of overwhelming importance, or those involving extraordinary circumstances or extreme hardship."

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause remanded for collection of the costs below. Costs of appeal are adjudged against Mr. Cunningham.

Houston M. Goddard, P.J.

CONCUR:

Don T. McMurray, J.

Charles D. Susano, Jr., J.

Appendix

ISSUES PRESENTED FOR REVIEW

I. APPELLANT WAS DENIED DUE PROCESS OF LAW, PRIOR NOTICE OF SPECIFIC CHARGE WAS NOT GIVEN NOR OPPORTUNITY TO PROVIDE AN ADEQUATE DEFENSE.

¹ Rule 60 of the Tennessee Rules of Civil Procedure.

II. APPELLANT WAS ENTITLED TO THE DEFENSE OF INABILITY TO PERFORM ALL EVIDENCE OF INCOME AND FINANCIAL STATUS SUPPORTED HIS AFFIRMATIVE DEFENSE.

III. TRIAL COURT ACTED IMPROPERLY IN AWARDING ATTORNEY FEES TO ENFORCE PROPERTY SETTLEMENT ORDER.

IV. TRIAL COURT ACTED IMPROPERLY IN ENFORCING JUDGEMENT FOR ATTORNEY FEES BY THREAT OF INCARCERATION WHERE PROPER PROCEDURE WAS BY LET EXECUTION.

V. DEFENDANT AVERS, DUE TO INADVERTENT MISTAKE HE WAS UNABLE TO PRESENT TESTIMONY SHOWING HIS CONTEMPT WAS NOT WILLFUL OR CONTUMACIOUS, BUT DUE TO SEVERE ILLNESS, BUSINESS LOSSES AND FACTORS BEYOND HIS CONTROL.

VI. THE TRIAL COURT ERRED IN AWARDING ATTORNEY FEES WITHOUT THE REQUISITE AFFIDAVIT STATING THE HOURS WORKED OR SERVICES PERFORMED.

VII. TRIAL COURT ACTED IMPROPERLY IN TREATING CIVIL CONTEMPT IN A SUMMARY AND CRIMINAL MANNER, ORDERING ALMOST IMMEDIATE INCARCERATION INSTEAD OF THE APPROPRIATE PROCEDURE OF EXECUTION WITH OPPORTUNITY TO EXPUNGE THE CONTEMPT BY TIMELY PAYMENTS.

VIII. MOTION OF PLAINTIFF, ON WHICH TRIAL COURT ACTED, DID NOT CONTAIN ALLEGATION OF CONTEMPT IN REFUSING TO PAY PROPERTY SETTLEMENT, HENCE COURT IMPROPERLY RULED ON ISSUE THAT WAS NOT PRESENTED BY PROPER NOTICE.

IX. APPELLANT RESPECTFULLY SUBMITS THAT TRIAL COURT ERRED IN ALLOWING A DEGREE OF PREJUDICE AND BIAS AGAINST HIM THAT "MORE PROBABLY THAN NOT" AFFECTED SUBSTANTIAL RIGHTS AND INFLUENCED THE JUDGEMENT AGAINST HIM WITH THE ACCOMPANYING PREJUDICE TO THE JUDICIAL PROCESS.

X. TRIAL COURT ACTED IMPROPERLY IN A RULING OF CIVIL CONTEMPT ON AN ALLEGED ACT THAT TOOK PLACE SEVEN YEARS BEFORE THE 1994 DATE OF THE HEARING. PLAINTIFF HAD AMPLE OPPORTUNITY TO PLEAD A CIVIL CONTEMPT OF SAID ACT, INCLUDING A PREVIOUS HEARING IN THE YEAR 1993.

XI. APPELLANT AVERS THAT THE TRIAL COURT'S RULING FAILED TO ADEQUATELY ADDRESS THE ISSUE OF THE INCOME TAX DEDUCTION FOR THE YEARS PRIOR TO 1994.